UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UPS SUPPLY CHAIN SOLUTIONS, INC.

and 12–CA–159257
12–CA–168819

UNION DE TRONQUISTAS DE PR,
LOCAL 901, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Carlos J. Saavedra-Gutierrez and *Vanessa Garcia, Esqs.*
for the General Counsel.
Alicia Figueroa Llinas and *Jose A. Silva-Cofresí, Esqs.,*
for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. These consolidated cases were tried in San Juan, Puerto Rico on March 8, 2016. The charges emanate from a disagreement during bargaining as to the right of a party to insist on the translation into English of a collective-bargaining proposal written in Spanish in the United States Commonwealth of Puerto Rico. The dispute illustrates the unique implications of interstate commerce in an American territory where its citizens communicate primarily in a language other than English. [1]

The consolidated complaints allege that UPS Supply Chain Solutions, Inc. (the Company, UPS or Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act[2] by: (1) unlawfully insisting since July 15, 2015,[3] as a condition of reaching an initial collective-bargaining agreement (CBA) with the Union De Tronquistas De PR, Local 901, International Brotherhood of Teamsters (the Union), "that the Union submit all of its collective-bargaining proposals in English, notwithstanding that Respondent's representatives who are dealing directly with the Union are fluent in Spanish and the employees in the Unit speak Spanish;" (2) as a result of such a condition, which is not a mandatory subject of bargaining, the Company, since March 2, 2015, "has failed and refused to make a counterproposal to the Union's Spanish

[1] The laws of the Commonwealth of Puerto Rico declare Spanish and English as the "official languages of the Government of Puerto Rico." See, 1 L.P.R.A. § 59. It is also decreed that "[w]hen necessary, written translations and oral interpretations shall be made from one language to the other so that the interested parties can understand any proceeding or communication in said languages." 1 L.P.R.A. § 59(a)
[2] 29 USC §§151–169.
[3] All dates are 2015 unless otherwise indicated.

language proposal for an initial collective-bargaining agreement;" and (3) failing and refusing, since August 6 to meet and collectively bargain with the Union for an initial CBA.

The Company denies the allegations that it has failed to bargain in good faith and asserts the amended complaint in Case 12–CA–168819 is partially time-barred because it was not filed until more than 6 months later, on February 19, 2016.

Procedurally, the Union filed a charge in Case 12–CA–159257 on September 2. That charge alleged that, since "about June 2015," UPS has bargained in bad faith with the Union by conditioning continued negotiations for an initial CBA on the Union's translation of its proposal from Spanish into English. The initial complaint in 12–CA–159257 issued on December 30. On February 19, 2016, the General Counsel amended the complaint to change the accrual date from June 2015 to "on or about July 15, 2015."

On February 1, 2016, the Union filed a charge in 12–CA–168819 alleging that the Company failed to bargain in good faith since January 2016, by refusing to meet and bargain because of the charges pending before the Board. On February 19, the Union filed an amended charge in Case 12–CA–168819 alleging that, since August 1, the Company has been refusing to meet and bargain with the Union for the purpose of negotiating a first CBA. A complaint in Case 12–CA–168819 issued on February 23. On March 2, 2016, the Regional Director issued an order consolidating Cases 12–CA–159257 and 168819 for hearing.

On the entire record, including my observation of the demeanor of the sole witness, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a Delaware corporation with its principal place of business in Atlanta, Georgia, is engaged in the business of delivering parcels and providing specialized transportation and logistics services worldwide, including from a place of business in Caguas, Puerto Rico, where it annually derives gross revenues in excess of $50,000 from the transportation of freight in interstate commerce and purchases and receives goods valued in excess of $50,000 directly from points outside the Commonwealth of Puerto Rico. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

Ilka Ramon (Ramon) is the Company's Human Resources Director for its operations in Puerto Rico. José Silva Cofresí, Esq., serves as the Company's labor counsel in Puerto Rico.[4] In

[4] It is undisputed that Ramon was at all relevant times a supervisor within the meaning of Section 2(11) and agent within the meaning of Section 2(13) of the Act.

its daily operations within Puerto Rico, the Company's supervisors, managers and employees typically communicate with each other in Spanish, the language primarily spoken in the Commonwealth.[5]

On July 29, 2014, the National Labor Relations Board (the Board) certified the Union as the exclusive collective-bargaining representative of approximately 15 company employees. That unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Unit) and is defined as follows:

> All regular full-time and regular part-time warehouse employees who work at the Employer's facility in Caguas, Puerto Rico, excluding all other employees, guards, and supervisors as defined in the Act.

Since certification, the parties have not signed an initial CBA. Lucas Alturet and Argenis Carillo have served as the Union's representatives during collective bargaining. The Company has collective-bargaining agreements with two other units in Puerto Rico, both of which are also local affiliates of the International Brotherhood of Teamsters. While those locals are operated independently of the unit of employees based in Caguas, Carillo is familiar with their collective-bargaining agreements. He is also aware that the Company and the other two Teamsters locals divide the cost of translating their CBAs into English.[6]

B. Bargaining

In a letter, dated December 16, 2014, Alturet requested that Ramon provide dates for collective bargaining. He also mentioned that the Union's written proposal would be forthcoming. Three days later, Silva Cofresí, acknowledged the request and advised that as soon as he received and reviewed the Union's written proposals he would "be in the position to propose dates for bargaining.[7]

On February 18, Carillo provided Ramon with the Union's 67-page proposal for a CBA, typewritten in Spanish, and stated his availability for bargaining during the following week at a time and place of the Company's choosing.[8]

On March 25, prior to a first bargaining session, Silva Cofresí informed Carillo that "[d]ue to the loss of an important client," the Company intended to lay off employees. He offered to meet with Carillo and bargain over the layoffs and the effects on Unit employees.

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[5] U.S. Census Bureau data reveals that 94.9 percent of Puerto Rico's residents speak a language other than English at home, 79.4 percent speak English less than "very well," and 70.2 percent of households in Puerto Rico have no one in the household age 14 and over who speaks English only or speaks English "very well." See, United States' Census Bureau, 2014 American Community Survey for Puerto Rico. http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S0501&prodType=table.

[6] Carillo denied that there is any relationship between the unit and the other two Teamsters locals in Puerto Rico. However, he conceded that Ramon was the Company's primary connection to all three labor organizations. (Tr. 43–44, 67–68, 74–75.)

[7] Jt. Exh. 1–2.

[8] Jt. Exh. 3.

Carillo agreed and the parties met and bargained over the issue on March 26 at the Union's office. During that meeting, the parties reached an agreement over the issue of layoffs. The discussions were conducted in Spanish and there was no exchange of written proposals.[9]

On April 9, the parties met for the initial bargaining session. During this and all subsequent bargaining sessions negotiations were conducted in Spanish. In addition, with the exception of ground rules proposed by the Company at this session, all written communications between the parties before and after this meeting were exchanged in Spanish. The proposed ground rules were signed by Ramon and left blank for Carrillo to sign. The document identified the members of the bargaining committees – Carillo, Janytza Jimenez and "any other union representative" for the Union; and Ramon, Silva Cofresí and "any other UPS representative" for the Company. It also stated, in pertinent part:

> 3. The proposals and counterproposals will be made in writing, in English, duly identified by date and the name of the proposing party. It may be done in handwriting.
>
> 6. The parties' Committees have legal authority to bargain and reach agreements. However, the agreements, upon finishing the negotiation, will be subject to ratification in the assembly in the case of the Union and UPS representatives, in the case of UPS.[10]

The parties discussed the proposed ground rules, but the Union did not agree to any of them, including the Company's insistence that the Union's initial CBA proposal be translated into English. Nevertheless, the parties proceeded to discuss every one of the clauses in the Union's proposal. An agreement was not reached regarding any of the proposed CBA provisions and the parties agreed to meet again on July 15.[11]

The second bargaining meeting was held on July 15. Carillo and Silva Cofresí continued discussing the Company's proposed ground rules and reached agreement on some, but Carillo continued to resist the Company's proposal that the Union translate its initial CBA proposal. He suggested that if the Company wanted the Union's initial CBA proposal translated into English it should pay for the cost of doing that. In response, Silva Cofresí proposed that the Company and Union each pay 50 percent of the translation costs. Carillo rejected that proposal as well.

After concluding discussion of the Company's proposed ground rules, the parties moved to a discussion of contract language. They discussed several provisions of the Union's proposed CBA but failed to agree on any of them. The Company did not submit a counterproposal.

On the same day, Carrillo requested that Ramon provide the following information: (1) disciplinary regulation; (2) medical plan benefits book; (3) service procedure or any related

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[9] Jt. Exh. 4.

[10] The proposal was entitled an "Agreement Regarding The Norms That Will Rule The Negotiations Of The Collective Bargaining Agreement Between The Union . . . And . . . UPS." (Jt. Exh. 5.)

[11] Carillo initially testified that item 3 of the ground rules— requiring that proposals be written in English— was not discussed during the first meeting. On cross-examination, however, he conceded that "[i]n that . . . first meeting of April 9 . . . the Union was clear that it would not translate the first proposal." (Tr. 28, 49–50.)

document; and (4) a breakdown of employees with an hourly salary.[12] Silva Cofresí replied on July 20, providing Carrillo with an employee list, including classification and salary, and a summary plan description of the health plan. He also reported that the Company did not have a disciplinary regulation in effect.[13]

On July 24, the parties met for a third bargaining session. Carillo and Silva Cofresí discussed several provisions of the Union's proposed CBA, as evidenced by Carillo's notations on numerous pages throughout the draft. No agreement was reached regarding a CBA. Carillo also requested a written counterproposal from the Company, but received only oral counterproposals from Silva Cofresí. The parties continued to disagree on the Company's insistence that the Union translate its initial proposal into English. Silva Cofresí explained that the Company's insistence on an English language version of the Union's initial CBA proposal was based on a request by a company official based at its headquarters in Georgia and "they . . . maintained their insistence on splitting costs . . . as a condition for the negotiations to continue that this matter be resolved."[14]

On August 6, Carrillo wrote to Ramon and informed her that he had "not received any formal reply regarding the status of the [negotiations], nor have I received any dates in order to continue with negotiations." He warned that, unless Ramon replied with the "dates to negotiate, I will be filing in the pertinent forums, understanding that the employer's demand is still the original document (Union's proposal) being translated into English. I have reiterated our position on several occasions regarding this issue and I still have not received a written reply."[15] Carrillo's warning evoked a reply from Silva Cofresí the next day:

> Our client, [UPS] has referred your August 6, 2015 letter to us relating to the collective bargaining agreement negotiations between the Union and UPS. As you know, we have conducted three (3) collective bargaining negotiations, the first one being on April 9, 2015, the second one on July 15, 2015 and the third one on July 24, 2015. You also know that since the beginning, we asked that the Union's proposals be in English because these have to be in verified by people in the U.S. who only speak English. Also, as part of the negotiating team, people from the U.S. who only speak English may come down. It is for the above reasons that UPS has asked, since the beginning of negotiations, that both the proposals and counterproposals be made in the English language because of the above reasons. In fact, we went as far as to inform you that UPS was willing to pay 50% of the cost in translating your proposals into the English language. The Union simply refused. Finally, we invite you to continue with the negotiations as soon as possible.[16]

Rather than reply, the Union filed an unfair labor practice charge on August 17. That charge was subsequently withdrawn. On September 2, the Union filed the charge in Case 12–

[12] Jt. Exh. 6.
[13] The Union did not take issue with the adequacy of the Company's response. (Jt. Exh. 7.)
[14] Carillo testified that the English language demand was attributed to "a request received from the United States, somebody in the United States." Since the Commonwealth of Puerto Rico is a territory and a part of the United States, the likely inference is to an official at the Company's Atlanta, Georgia headquarters. (Tr. 31–33.)
[15] Jt. Exh. 8.
[16] Jt. Exh. 9.

CA–159257 alleging that the Company had, since June, bargained in bad faith by conditioning continued bargaining on the Union's translation of its initial CBA proposal into English.

There were no further communications between the parties until November 19 when Silva Cofresí followed up his August 7 letter to Carrillo by reiterating the Company's interest in resuming negotiations and urging Carrillo to contact him to schedule bargaining dates.[17] On November 20, Carrillo rejected Silva Cofresí's overture, expressed surprise and confusion, and asked whether the Company was withdrawing its conditions on the exchange of proposals and its insistence that the Union translate its original proposal into English. He referred to the Board charges filed by the Company as the "only reason why the negotiation has been delayed."[18]

On December 8, Carrillo wrote to Silva Cofresí requesting dates for the resumption of bargaining.[19] Silva Cofresí responded in an email on December 10, asking Carillo to call him to schedule bargaining dates. During a telephone conversation that day, Silva Cofresí explained that he could not schedule bargaining during December because it was the Company's "high season." He informed Carillo that he would schedule further bargaining dates once the Company got through high season.[20]

The scheduling of dates to resume bargaining, however, proved elusive. Carillo called Silva Cofresí around the end of December or beginning of January, but the latter explained that Ramon would be on vacation and he could agree to dates when she returned. On January 27,[21] Carrillo wrote to Silva Cofresí, referring to their last conversation in which the latter told Carillo he would provide dates upon Ramon's return from vacation, but Silva Cofresí told Carrillo that he did not have available dates and "would continue with the case pending before the NLRB." Carillo concluded with a request for bargaining dates so that negotiations could resume without being contingent upon the Union presenting its original proposal in English.[22]

Silva Cofresí replied the same day, acknowledging receipt of Carrillo's letter and suggesting there was a misunderstanding about further scheduling:

> It seems as though there was a misunderstanding between you and me, due to the fact that the last time we spoke, we agreed that we would wait on the result of the Board case and then continue negotiating. I will be contacting you soon.[23]

Silva Cofresí's reference in his letter to a "misunderstanding" about whether or not to delay negotiations while Board charges were pending was incorrect. Carrillo never agreed to freeze negotiations.[24]

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[17] Jt. Exh. 10.
[18] Jt. Exh. 11.
[19] Jt. Exh. 12.
[20] Jt. Exh. 13.
[21] Dates hereinafter refer to 2016.
[22] Jt. Exh. 14.
[23] Jt. Exh. 15.
[24] This finding is based on Carillo's credible and undisputed testimony that he never agreed to delay negotiations. (Tr. 38.) It was consistent with his November 20 letter declaring his availability to continue bargaining while at the same time attributing the delay to the pendency of Board charges. (Jt. Exh. 12.)

On February 5, Silva Cofresí wrote to Carrillo, reiterating the Company's willingness to pay 50 percent of the costs to translate the Union's proposals into English and invited the Union to continue with the negotiations on February 24.[25] Carrillo responded on February 8, accepting the proposed bargaining date and provided an opening on the issue of translation:

> In relation to your offer concerning the translation, let me remind you of the following: the company has placed the negotiations contingent upon the Union's first offer being translated into English. *On this condition, I have stated that yours truly can continue exchanging proposals in English as well as the final result of the negotiations if an agreement is reached, and divide the translation cost in half.* However, your committee has insisted on placing my proposal completely contingent upon translating the first offer in order to manage your client. Given this scenario, my position has not changed because it is an illegal, burdensome imposition that lacks practical sense. I will continue addressing this condition at the pertinent forum. I believe that your letter is only intended to confuse the administrative agencies relating to the pending charges and not seek a solution to the negotiation in good faith. We will be there on the day that you offered to see how the conditions that were imposed by the company have changed and the negotiation development.[26] (emphasis supplied)

On February 23, Silva Cofresí sent a text message to Carrillo asking whether the latter "was coming to negotiate tomorrow." Carrillo promptly replied "yes." Later that afternoon, however, Silva Cofresí texted again to state that since Carrillo had not provided prior confirmation, Ramon "can't come. So we can't negotiate tomorrow. Call me to schedule other dates for negotiation." Carrillo replied that his "confirmation has been in writing for a while" and he would consider further legal action.[27]

Carrillo responded in an email a short while later. The email referred to an attached letter in which he confirmed the February 24 bargaining date. He also referred to a telephone conversation they had earlier that day confirming bargaining on February 24. On February 24, Silva Cofresí rejected Carrillo's assertion, insisting that Carrillo "didn't attach the letter that was supposedly sent to me." He offered to resume bargaining on March 22–23.[28]

LEGAL ANALYSIS

I. THE COMPANY'S TIMELINESS DEFENSE

Preliminarily, the Company contends that the amended complaint in Case 12–CA–168819, alleging that it has failed to bargain in good faith since August 1, 2015, is partially time-barred. The amended charge was indeed filed more than 6 months later, on February 19, 2016. The timing defect, however, is not fatal if the conduct alleged occurred within 6 months of a timely

[25] Jt. Exh. 16.
[26] Jt. Exh. 17.
[27] Jt. Exh. 18.
[28] Jt. Exh. 19–20.

filed charge and is "closely related" to the allegations of the charge. *Fry's Food Stores,* 361 NLRB No. 140, slip op. at 2 (2014), citing *Redd-I, Inc.,* 290 NLRB 1115 (1988).

The initial charge in Case 12–CA–168819, filed on February 1, 2016, falls 6 months and 1 day after the August 1, 2015 accrual date in the amended charge. However, the timely-filed complaint in Case 12–CA–159257 alleges that the Company has, since July 15, 2015, unlawfully insisted that the Union submit all proposals in English and since March 2, 2015, failed and refused to make a counterproposal to the Union's Spanish language proposal. That complaint contained more specific theories than the more general claims of failing or refusing to meet and bargain in Case 12–CA–168819. However, the evidence produced at trial revealed the common threads in both consolidated cases—the alleged bargaining delays attributable to the translation dispute that rolled over into February 2016; and the bargaining delays alleged since either August 1, 2015, or January 2016, are allegedly attributed at least in part to the translation dispute and failure to provide a counterproposal since March 2015. The Company's defenses are the same in both cases.

Under the circumstances, the Union's charge that the Company has, since August 1, 2015 failed and refused to bargain in good faith defect is deemed "closely related" to the timely filed charges and amended complaint in Case 12–CA–159257. See *Alt. Energy Applications, Inc.*, 361 NLRB No. 139, slip op. at 1 (2014) (claims closely related where the events involved the same sections of the Act, arose from the same sequence of events, the events were part of the same chronology and involved the same people.). Accordingly, the Company's affirmative defense based on Section 10(b) of the Act is dismissed.

II. THE LANGUAGE ISSUE AS A SUBJECT OF BARGAINING

The complaint alleges that since July 15, 2015, as a condition of reaching an initial collective-bargaining agreement, the Company has unlawfully insisted "that the Union submit all of its collective-bargaining proposals in English, notwithstanding that the Company representatives dealing directly with the Union, as well as the unit employees, are fluent in Spanish." It is further alleged that as a result of such a condition, which is not a mandatory subject of bargaining, the Company, since March 2, 2015, "has failed and refused to make a counterproposal to the Union's Spanish language proposal for an initial collective-bargaining agreement" in violation of Section 8(a)(5) and (1) of the Act. In addition, the complaint alleges that the Company has failed and refused, since August 6, 2015, to meet and collectively bargain with the Union for an initial CBA.

The Company denies the allegations and contends that the "parties have historically negotiated in the English language and exchanged all proposals and counterproposals in the English language." That defense lacks merit since the evidence reveals that the parties have always conducted bargaining sessions in Spanish. The Company also insists, however, that it has bargained in good faith with the Union by offering to pay half the costs of translating the Union's Spanish language proposals, informing the Union about and bargaining over planned layoffs, and providing information requested by the Union.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." Section 8(d) of the Act defines

the duty to bargain collectively as "the . . . mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment."

Subjects deemed to relate to wages, hours and other terms and conditions of employment are considered mandatory subjects of bargaining. *NLRB v. Wooster Division of Borg-Warner,* 356 U.S. 342 (1958). When negotiating over a mandatory topic, a party cannot condition participation on either acceptance of its proposal or withdrawal of a demand by the other side. While a party can take a position that might ultimately result in a bona fide impasse, it cannot refuse to continue negotiations or discuss other issues. *Vanette Hosiery Mills,* (1948) 80 NLRB 1116 (employer unlawfully insisted on an agreement regarding wages as a precondition to bargaining over other subjects); *Heider Mfg. Co.*, 91 NLRB 1185, (1950) (employer's insistence on omitting from renewal contract benefits included in the most recent contract, including seniority, arbitration and grievance provisions, evidenced bad faith).

In contrast, parties are not required to bargain over nonmandatory, or permissive, subjects of bargaining. *NLRB v. Wooster Div. of Borg–Warner Corp.*, 356 U.S. at 348–349. Thus, a party violates section 8(a)(5) of the Act by insisting, even in good faith, on a nonmandatory subject as a precondition to reaching agreement on mandatory subjects. Id; *NLRB v. Pennsylvania Telephone Guild*, 799 F.2d 84, 87 (3d Cir.1986).

In this case, the parties actually met and bargained in Spanish over an initial collective-bargaining agreement, negotiations stalled when the Union proposed a CBA written in Spanish and the Company insisted that the Union provide it with a translated version of the proposal in English. The Union balked and the Company offered to share the cost of translation. The Union clung to its position, maintaining that, since the translation was requested for the Company's benefit, the Company should have to bear the full cost of that task. In essence, the General Counsel argues that the Company's demand for the Union to translate its initial CBA proposal entailed a preliminary issue constituting a permissive subject of bargaining.

The issue of whether to require the Union to translate its initial CBA proposal may seem like a procedural or logistical hurdle. The reality is, however, that certain logistics issues are "just as much part of the process of collective bargaining as the negotiations over wages, hours, etc.," and therefore mandatory subjects of bargaining. *Destileria Serralles, Inc.*, 289 NLRB 51, 58, fn. 17 (1988); *Gen. Elec. Co.*, 173 NLRB 253, 257 (1968).

Several facts are not disputed: (1) the Union's proposal for an initial CBA was written in Spanish; (2) the proposal contained provisions relating to unit employees' "wages, hours, and other terms and conditions of employment;" (3) there is/are company officials based in Georgia who, although not yet engaged in direct bargaining with the Union, are involved in the process through Silva Cofresí;[29] (4) one or more of those Company officials are not fluent in Spanish; (5) and the Union was aware of the fact that the Company and the two other Teamsters-affiliated locals in Puerto Rico exchange written CBA proposals and counterproposals in English.

[29] Although not elaborated in the record, it is reasonably inferred that Silva Cofresí was referring to a company official(s) with some role in the CBA approval process.

Under the circumstances, it is evident that the Company's demand for translation of the Union's initial CBA proposal is one that affects the "terms and conditions of employment" embodied within the document. The connection is obvious— without a translation of the Union's CBA proposal, one or more of the Company's representatives are unable to determine what the proposed terms and conditions are. It logically follows that if one is unable to decipher a document's contents he/she cannot reasonably be expected to negotiate over it.

Although the Board has not addressed this very issue, its decision in *Call, Burnup, and Sims, Inc.*, 159 NLRB 1661 (1966), indicates that the ability of negotiators to communicate with and understand each other constitutes a mandatory subject of bargaining over which the parties have a duty to bargain in good faith. In that case, which also arose in Puerto Rico, the Board addressed a dispute regarding the language to be spoken during bargaining. The union provided an English translation of its initial Spanish language contract proposal and offered to pay half the cost of an interpreter during bargaining. However, the employer rejected the offer, refusing to bargain in Spanish or split the cost of an interpreter. Under the circumstances, the Board held that the employer breached its duty to bargain in good faith by refusing to reach an accommodation to resolve the language problem which was impeding negotiations. Id. at 1663.

As in *Call, Burnup, and Sims, Inc.* the issue here relates to the ability of a party's representative to actually *understand* the terms, conditions and other terms of employment proposed by the other side. In the absence of such an understanding, a party would be unable to engage in and conclude bargaining over those terms of employment. As such, the issue of translating a document for the benefit of a party unable to understand it in its Spanish language form is distinguishable from instances cited by the General Counsel as examples of bargaining over permissive subjects of bargaining. Those examples involve logistical approaches or other issues of relevance to the proposing party. However, if resisted or ignored by the other party, such issues would not impede the proposing party's ability to negotiate in good faith over proposals relating to established terms and conditions of employment. *Bartlett-Collins Co.*, 237 NLRB 770, 772–773 (1978) (whether to use court reporters during bargaining); *Timken Co.,* 301 NLRB 610, 614–615 (1991) (same); *Local 3, International Brotherhood Of Electrical Workers, AFL–CIO*, 280 NLRB 265, 266–267 (1986) (whether to tape record negotiations); *Smurfit-Stone Container,* 357 NLRB 1732, 1733–1734 (2011) (insistence on midterm cancellation of contract as a condition to bargaining the effects of a plant closure); *Salvation Army of Massachusetts,* 271 NLRB 195, 198–199 (1984) (insistence on acceptance of employer's religious mission as a condition for negotiations); *Vanguard Fire & Supply Co.,* 345 NLRB 1016, 1017–1018, 1042–1043 (2005) (insistence on submission of an outline of the agenda prior to bargaining).

Applying the good faith bargaining obligation articulated in *Call, Burnup, and Sims, Inc.*, the Company took a reasonable step towards an accommodation by offering to pay for half the cost of translating the Union's CBA proposal. Carillo was aware of the practice between the Company and the two other Teamster's affiliates in Puerto Rico to exchange contract proposals in English and split the cost of translation. The Union, however, remained steadfast in its refusal to entertain such a resolution enabling the Company to treat the translation issue as a mandatory subject of bargaining, although it did not ultimately insist to impasse. Under the circumstances, the Company's insistence that the Union submit all of its collective-bargaining proposals in English involved a mandatory subject of bargaining over which it attempted to bargain in good faith with the Union.

Accordingly, the claim in Case 12–CA–159257 regarding the Company's insistence on an English translation of the Union's CBA proposal as a condition to further bargaining is dismissed.

II. THE COMPANY'S FAILURE TO MAKE PROPOSALS AND FAILURE TO MEET AND BARGAIN

The consolidated complaints also allege that the Company failed to make written bargaining proposals since March 2, 2015, intentionally delayed negotiations, and failed to meet and bargain since August 1, 2015 due to a host of spurious delays and excuses.

The Board has long held that an employer's failure to submit a counterproposal to a union's proposal violates Section 8(a)(5). *National Management Consultants, Inc.,* 313 NLRB 405 (1993) (employer's failure to submit any counterproposals tended to frustrate further bargaining and may thus constitute a clear rejection of its collective-bargaining duty); *Chalk Metal Co.*, 197 NLRB 1133, 1147 (1972) (same). In this context, even cursory responses have been deemed insufficient. See *Pioneer Astro Metallics*, *Inc.,* 156 NLRB 468, 472–473 (1965) (brief 1 1/3 page "Company reply" partially responding to union's proposal, omitting any reference to wages, amounted to a "counterproposal only 'for the record' and not with any genuine intent to negotiate an agreement"). Similarly, an employer's ploy to refrain from submitting a counterproposal and instead continue discussion over the language of a union's proposal constitutes bad faith bargaining. *Raynal Plymouth Co*., 175 NLRB 527, 530–531 (1969) (employer had union's proposals for several months, but presented no counterproposals and insisted on mere correction of typographical errors in the union's proposals).

The evidence fails to support a finding of bad faith delay by the Company prior to December 2015. The Union was certified as the bargaining unit's labor representative on July 29, 2014. On December 16, 2014, the Union requested the Company bargain over an initial CBA. Several days later, Silva Cofresí, acknowledged the request, but requested a written proposal from the Union before scheduling bargaining. That was a reasonable request since the parties would waste their time at a first bargaining session without one. On February 18, 2015, Carillo provided Ramon with the Union's proposal written in Spanish and asked for proposed meeting dates. The parties' initial bargaining session on April 9 was preceded by a March 25 meeting to bargain over the effects of layoffs. The parties met for two more sessions on July 15 and 24 during which they discussed the Union's CBA proposal.

During the July 24 meeting, Carillo also requested a written counterproposal, but received only oral counterproposals from Silva Cofresí. The latter also reiterated the Company's need for an English version of the Union's initial CBA proposal as a "condition for the negotiations to continue." On August 6, Carrillo warned that the Union would file charges unless the Company dropped its demand that the Union's initial CBA proposal be translated into English and provided dates for the resumption of bargaining. Silva Cofresí responded the following day, reiterating the Company's position regarding the need for translation, and essentially retracted his previous comments by inviting Carillo "to continue with the negotiations as soon as possible." Rather than accept Silva Cofresí's offer to resume bargaining, Carillo filed a charge on September 2. As previously discussed, that charge lacked merit because the

Company sought a reasonable accommodation by offering to pay for half the costs of translating the Union's initial CBA proposal.

There were no further developments until November 19, when Silva Cofresí again urged Carrillo to resume bargaining. Carrillo responded the next day. He attributed the delay to the filing of Board charges and rejected Silva Cofresí's request to resume bargaining unless the Company withdrew its request for an English translation of the Union's contract proposal.

On December 8, however, Carrillo had a change of heart. He wrote to Silva Cofresí and requested dates to resume bargaining. On December 10, Silva Cofresí and Carillo spoke by telephone. Silva Cofresí explained that he could not schedule bargaining during December because it was the Company's busy season. He told Carillo that he would schedule further bargaining dates once the Company got through high season. That did not happen.

After a few weeks elapsed, Carillo contacted Silva Cofresí around the end of December or beginning of January. However, Silva Cofresí explained that Ramon was going on vacation and he would provide dates when she returned. About a month elapsed without Silva Cofresí contacting Carillo. Carrillo followed up again on January 27, but this time Silva Cofresí took a different tack, stating that he was unable to meet and "would continue with the case pending before the NLRB." Carillo concluded with a request for bargaining dates so that negotiations could resume without being contingent upon the Union presenting its original proposal in English. Silva Cofresí replied the same day and suggested that there was a misunderstanding between them as to whether or not to delay negotiations while Board charges were pending. Carrillo, however, never agreed to freeze negotiations.

On February 5, Silva Cofresí reiterated the Company's willingness to pay 50 percent of the costs to translate the Union's proposals into English and invited the Union to resume negotiations on February 24. Carrillo accepted the offer to resume bargaining on February 8 and, for the first time, provided a basis for further bargaining over the translation issue. Although once again rejecting the Company's offer to share in the cost of translating the Union's initial contract offer, Carillo proposed to "continue exchanging proposals in English as well as the final result of the negotiations if an agreement is reached, and divide the translation cost in half."

On February 23, Silva Cofresí sent a text message to Carrillo requesting confirmation of bargaining the next day. Carillo provided the confirmation shortly thereafter, but Silva Cofresí texted him later that afternoon, stating that Ramon would be unavailable because Carillo had not provided prior confirmation. He urged Carillo to call to schedule new dates. Carrillo responded in a text message rejecting Silva Cofresí's excuse as a ploy. The next day, Silva Cofresí disputed Carrillo's assertion but offered to resume bargaining on March 22 or 23.

The Union's bargaining posture prior to December 2015 relieved the Company from culpability under the Act. On December 10, however, responsibility for the bargaining delays shifted to the Company when Silva Cofresí began a pattern of delay tactics by failing to offer any future bargaining dates based on his client's unavailability during the "high season." See *Diversified Bank Installations, Inc*., 324 NLRB 457, 467 (1997) (employer's failure to respond to

union's requests for meetings were tantamount to a refusal to continue bargaining with the union during the term of the parties' contract).

When Carillo contacted him a few weeks later, Silva Cofresí failed again to provide dates for bargaining, declaring his client unavailable because she was on vacation. He assured Carillo that he would provide dates upon her return but another month elapsed. When Carillo contacted him in late January, Silva Cofresí shifted course, first refusing to meet because of the pending Board charges and then falsely representing that the parties agreed to freeze bargaining for that reason. See *Fred Meyer Stores, Inc*., 355 NLRB 179, 179 fn. 1 (2010) (conditioning bargaining on pending litigation constitutes bad faith bargaining); and *Richard Melow Electrical Contractors Corp*., 327 NLRB 1112, 1116 (1999) (employer failed to respond to request to meet which had been agreed to as part of a settlement of prior unfair labor practice charges).

On February 23, Silva Cofresí cancelled bargaining scheduled for the next day on a baseless excuse that Carillo had not confirmed more than 1 day in advance of the scheduled February 24 session. See *Calex Corp.,* 322 NLRB 977, 978 (1994).

Under the circumstances, the totality of the Company's conduct since December 10, 2015, caused delays in bargaining through March 2016, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Company, UPS Supply Chain Solutions, Inc., is an employer engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Brotherhood of Teamsters, Local 512, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time and regular part-time warehouse employees who work at the Employer's facility in Caguas, Puerto Rico, excluding all other employees, guards, and supervisors as defined in the Act.

4. At all times since July 28, 2014, the Union has been, and continues to be the certified exclusive bargaining representative of the employee in the above-described unit.

5. The Company has failed and refused to meet and bargain with the Union, and, has by its overall conduct, failed and refused to bargain in good faith with the Union as the exclusive collective bargaining representative of the Unit in violation of Section 8(a) (5) and (1) of the Act by (1) on or about December 10, 2015, failing and refusing to schedule bargaining sessions until February 24, 2016; and (2) on February 23, 2016, canceling a bargaining session scheduled for February 24, 2016 and not agreeing to schedule another session until March 22 or 23, 2016.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. It is recommended the Company be ordered, upon request of the Union, to meet and bargain in good faith with the Union, and, if a collective-bargaining agreement is arrived at to reduce the same to writing and execute the agreement. The General Counsel also seeks a remedy affording the Union an additional year during which time its majority status cannot be questioned. Such relief is typically granted where the employer has, *during the year immediately following certification,* failed and refused to bargain in good faith with a certified union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Under the circumstances, the Company failed and refused to bargain during a 4-month period. However, that unlawful conduct did not commence until 5 months after the expiration of the initial year following certification. Accordingly, there is no basis for an additional remedy extending the Union's initial certification year for purposes of withstanding any challenges to majority status.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, UPS Supply Chain Solutions, Inc., Caguas, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet at reasonable times and bargain in good faith with the Union as the exclusive collective-bargaining representative for its employees in the following appropriate bargaining unit:

> All regular full-time and regular part-time warehouse employees who work at the Employer's facility in Caguas, Puerto Rico, excluding all other employees, guards, and supervisors as defined in the Act.

(b) Canceling previously agreed upon bargaining sessions.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 15 days of the Union's request, bargain with the Union at reasonable times and places in good faith as the exclusive bargaining representative of its employees in the above-

[30] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

described bargaining unit with respect to wages, hours, and other terms and conditions of employment until a full agreement or a bona fide impasse is reached, and if an understanding is reached, embody the understanding in a written agreement.

Dated: Washington, D.C. April 13, 2016

Michael Rosas
Administrative Law Jude

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet at reasonable times and bargain in good faith with the Union De Tronquistas De PR, Local 901, International Brotherhood of Teamsters (the Union) as your exclusive collective-bargaining representative in the following appropriate bargaining unit:

All regular full-time and regular part-time warehouse employees who work at the Employer's facility in Caguas, Puerto Rico, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT cancel previously agreed-upon bargaining sessions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, within 15 days of the Union's request, bargain at reasonable times and places and in good faith with the Union as your exclusive bargaining representative with respect to wages, hours, and other terms and conditions of employment until a full agreement or a bona fide impasse is reached, and if an understanding is reached, embody the understanding in a written agreement.

WE WILL meet with the Union on agreed upon and scheduled bargaining dates.

UPS SUPPLY CHAIN SOLUTIONS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Ste 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-159257 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.